

Senate Bill No. 1348

Passed the Senate August 26, 2010

Secretary of the Senate

Passed the Assembly August 16, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 14521.5 to the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, Steinberg. California Transportation Commission: guidelines.

Existing law generally provides for programming and allocation of state and federal funds available for transportation capital improvement projects by the California Transportation Commission, pursuant to various requirements. Existing law authorizes the commission, in certain cases, to adopt guidelines relative to its programming and allocation policies and procedures.

Existing law, the Administrative Procedure Act, generally governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law, in certain instances, exempts state agencies from these requirements.

This bill would establish specified procedures that the commission would be required to utilize when it adopts guidelines, except as specified, and would exempt the adoption of those guidelines from the requirements of the Administrative Procedure Act.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) From time to time, the Legislature has authorized the California Transportation Commission to adopt guidelines for the development and administration of statutorily created transportation programs.

(b) Examples of the legislative authorization described in subdivision (a) include, but are not limited to, the authority for guidelines for the administration of transportation programs funded by the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with

Section 8879.20) of Division 1 of Title 2 of the Government Code), including the Corridor Mobility Improvement Account (CMIA) and the Highway-Railroad Crossing Safety Account.

(c) In 2009, the commission also adopted program guidelines for the implementation of the public-private partnership authority the Legislature granted to the Department of Transportation (Caltrans) and to regional transportation planning agencies pursuant to Section 143 of the Streets and Highways Code.

(d) The Legislature has exempted program guidelines adopted by the commission from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) so that the commission may adopt guidelines quickly and may amend adopted guidelines in response to quickly changing circumstances.

(e) On some occasions, the commission's process for adopting program guidelines has lacked transparency and has not provided the public with ample opportunity to fully review and comment on proposed guidelines.

(f) To ensure the commission's process for the adoption of program guidelines is understandable, predictable, and transparent, and to ensure the commission's process provides ample opportunity for public review and comment on proposed guidelines, it is necessary to place into statute a process for the adoption of program guidelines by the commission.

SEC. 2. Section 14521.5 is added to the Government Code, to read:

14521.5. (a) Notwithstanding any other law, the adoption of the guidelines by the commission shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). Except for the State Transportation Improvement Program (STIP) guidelines adopted pursuant to Sections 14526, 14527, and 14529, on or after January 1, 2011, the commission shall adopt guidelines using the procedures established pursuant to this section.

(b) The commission's legal counsel shall review the proposed guidelines for matters such as necessity, authority, clarity, consistency, reference, and nonduplication, and recommend any proposed action to the commissioners. For purposes of this section, "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication" shall each have the same meaning as defined in

Section 11349. The commission's legal counsel's recommendations and communications to the commission concerning the results of the review shall be subject to the attorney-client privilege, unless otherwise waived. The commission's executive director shall cause the recommendations and communications to be distributed to all commissioners.

(c) Program or policy guidelines shall first be presented at a commission meeting for purposes of receiving public comment. At least 45 days prior to the meeting, the proposed or draft guideline shall be sent to any person who has requested notices of the meetings of the commission and shall be available to the public in electronic format. The proposed or draft guideline shall include notice of the right of the public to comment orally on the proposed or draft guideline during the public meeting or to comment in writing at any time prior to the meeting or within seven business days following the meeting, at which time the written comment period shall be closed.

(d) Following the close of the written comment period, the commission staff shall review all written and oral comments and shall prepare a summary of the objections and recommendations made in those comments and an explanation of how the proposed guideline is proposed to be changed to accommodate the objections or recommendations, or the reason or reasons for proposing no change.

(e) The staff recommendations and summary described in subdivision (d) shall be made publicly available at least 15 days prior to a subsequent regular meeting of the commission. At that subsequent public meeting, the commission shall consider the staff recommendations and any additional public comment made at the meeting prior to voting on the adoption of the proposed guideline. A program or policy guideline adopted by the commission shall be adopted by an affirmative vote of a majority of the commission membership.

(f) The commission shall maintain a guideline adoption file containing the public notice, public comments, and minutes of the public meeting, including the action taken by the commission, and a letter from the commission's legal counsel confirming that he or she reviewed the proposed guidelines for compliance with the standards set forth in subdivision (b).

(g) The guideline adoption file shall contain a summary of each objection or recommendation made and an explanation of how the proposed guideline was changed to accommodate each objection or recommendation, or the reason or reasons for making no change.

(h) The commission shall include in its annual report to the Legislature, required pursuant to Section 14535, a summary of its activities related to the adoption of program or policy guidelines during the previous calendar year, including, but not limited to, a summary of the proposed guidelines considered by the commission, a description of the actions taken by the commission, and the votes of the commission on matters it considered.

Approved _____, 2010

Governor